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AMERIPRISE FINANCIAL SERVICES, INC.

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CLERK OF DISTRICT COURT  
SANTA ANA

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSE NETO,

Plaintiff,

v.

AMERIPRISE FINANCIAL, INC., A  
CORPORATION; AMERIPRISE  
FINANCIAL SERVICES, INC., A  
CORPORATION; AUGUSTINE CHOI, AN  
INDIVIDUAL; AND DOES 1-100,  
INCLUSIVE,

Defendants.

CASE NO. CV09-9309 RSWL(FFMX)

DEFENDANTS AMERIPRISE  
FINANCIAL, INC. , AMERIPRISE  
FINANCIAL SERVICES, INC. AND  
AUGUSTINE CHOI'S NOTICE OF  
REMOVAL PURSUANT TO 28 U.S.C.  
SECTIONS 1332 AND 1441(B)

(DIVERSITY JURISDICTION)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendants Ameriprise Financial, Inc. ("AFT"),  
Ameriprise Financial Services, Inc. ("AFSI") and Augustine Choi hereby remove to the United  
States District Court for the Central District of California the state court action described below.

1. On August 6, 2009, a civil action was commenced by Plaintiff Jose Neto in the  
Superior Court of the State of California, for the County of Los Angeles, entitled Neto v.  
Ameriprise Financial, Inc.; Ameriprise Financial Services, Inc.; Augustine Choi; and Does 1-  
100, inclusive, case no. BC419383 (hereafter, the "State Court Action"). See Complaint for  
Damages (the "Complaint") attached as Exhibit A to the Declaration of Thomas F. Berndt  
("Berndt Decl."). All named Defendants in the State Court Action have joined in, and consented

Defendants Ameriprise Financial, Inc., Ameriprise Financial Services, Inc., and Augustine Choi's Notice of  
Removal Pursuant to 28 U.S.C. Sections 1332 and 1441(B)

COPY

1 to, this removal of the State Court Action.

2           2.       The Complaint, filed on August 6, 2009, inaccurately stated that Plaintiff was a  
3 California resident at the time it was filed. *See* Complaint at ¶¶ 2, 3. The Complaint alleged “all  
4 parties reside or conduct business in Los Angeles County, California” and that “[a]t all times  
5 material herein, Plaintiff Neto began as a resident of the State of Hawaii and then became a  
6 resident of the State of California.” *Id.* Thus, from the face of the Complaint it appeared that no  
7 diversity jurisdiction existed so as to justify removal to federal court.

9           3.       December 7, 2009, was the first date upon which Defendants had knowledge that,  
10 contrary to the allegations in the Complaint, Plaintiff was a resident of Hawaii at the time the  
11 Complaint was filed and at all times thereafter. *See* Berndt Decl. Exs. B, C, D. On December 7,  
12 2009, AFI and AFSI received discovery responses in which Plaintiff stated that he “relocate[d]  
13 back to Hawaii.” Plaintiff’s Response to Form Interrogatory 210.4, Berndt Decl. Ex. B. When  
14 asked to state his current and past residences, Plaintiff stated he resided in California from  
15 “March 09 to July 09” and in Hawaii from “August 09 to present.” Plaintiff’s Response to Form  
16 Interrogatory 2.5, Berndt Decl. Ex. C. This removal is timely because this notice of removal was  
17 filed and served by Defendants AFI and AFSI “within thirty days after receipt by the defendant,  
18 through service or otherwise, of a copy of an amended pleading, motion, order **or other paper**  
19 from which it may first be ascertained that the case is one which is or has become removable . . .  
20 .” 28 U.S.C. § 1446(b) (emphasis added).

23           4.       The State Court Action is a civil action of which this United States District Court  
24 has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this  
25 District Court by Defendants pursuant to 28 U.S.C. 1441(b) in that this is a civil action between  
26 citizens of different states and the amount in controversy exceeds the sum of \$75,000.00  
27 exclusive of interest and costs.

1           5.       Where a state court complaint is unclear as to the amount in controversy, a  
2 removing party need only show that it is “more likely than not” that the amount in controversy  
3 exceeds \$75,000. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. Cal. 2007)  
4 (quoting *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398 (9th Cir. 1996)). A removing  
5 defendant may make the requisite showing by either demonstrating that it is “facially apparent”  
6 from the complaint that the claims likely exceed \$75,000 or by setting forth facts in a notice of  
7 removal that support a finding of the requisite amount. *Luckett v. Delta Airlines, Inc.*, 171 F.3d  
8 295, 298 (5th Cir. 1999) (it was “facially apparent” that claim exceeded \$75,000 where plaintiff  
9 alleged property damage, travel expenses, emergency ambulance trip, six-day stay in the  
10 hospital, pain and suffering, humiliation, and temporary inability to do housework); *see also*  
11 *White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003) (it was facially apparent plaintiff’s  
12 wrongful termination claim exceeded \$75,000 based on her “lengthy list of compensatory and  
13 punitive damages” including loss of pay, fringe benefits, impaired earning capacity, harm to  
14 credit, emotional distress, and attorney fees). Here, although Plaintiff does not specifically  
15 allege the amount in controversy, the Complaint along with Plaintiff’s discovery responses  
16 demonstrate that it is more likely than not that the amount in controversy exceeds \$75,000.  
17  
18

19           A. Plaintiff seeks damages for the following items:  
20

- 21           1) Lost income – Plaintiff seeks both past and future income loss resulting from  
22 his termination. *See* Plaintiff’s Response to Form Interrogatory No. 210.2,  
23 Berndt Decl. Ex. B. Plaintiff alleges he would have earned \$33,000 annually  
24 from Defendants. Complaint at ¶¶ 11, 23. Based on this information, it takes  
25 less than two-and-a-half years of Plaintiff’s alleged lost income to exceed the  
26 jurisdictional threshold. Even if the Court considers only the approximately  
27 seven-and-a-half months of lost wages Plaintiff has allegedly suffered to date,  
28

1 this alone totals \$20,625.

- 2 2) Compensation for alleged wage and hour violations – Plaintiff seeks  
3 compensation for alleged off-the-clock work as well as alleged unpaid  
4 overtime pay. Complaint at ¶¶ 26-28.
- 5 3) Lost employment benefits – Plaintiff seeks compensation for lost benefits,  
6 including health and dental insurance and enrollment in a 401(k) Plan.  
7 Complaint at ¶ 30; Plaintiff’s Response to Form Interrogatory No. 210.5,  
8 Berndt Decl. Ex. B. Plaintiff also claims Defendants promised to reimburse  
9 him for the expenses of taking examinations to obtain his Series 6, Series 66,  
10 and California Life and Health licenses. Complaint at ¶ 30.
- 11 4) Compensation for physical, mental, and/or emotional injury – Plaintiff alleges  
12 that as a result of Defendants’ alleged conduct, he “has suffered and continues  
13 to suffer severe emotional distress, in an amount to be proven at trial.”  
14 Complaint at ¶ 23. Plaintiff alleges Defendants caused him to suffer: “Severe  
15 emotional distress, chest pains, high blood pressure, stress, respiratory  
16 problems, inability to sleep, stomach problems, loss of appetite, problems  
17 getting motivated, mental and emotional stress.” Plaintiff’s Response to Form  
18 Interrogatory No. 212.4, Berndt Decl. Ex. B.
- 19 5) Medical expenses - Plaintiff claims his emotional distress has caused him to  
20 make at least one doctor’s visit, which involved an ultrasound procedure.  
21 Plaintiff’s Response to Form Interrogatory No. 212.4, Berndt Decl. Ex. B.
- 22 6) Job search expenses - Plaintiff does not elaborate on what this item of  
23 damages involves. See Complaint at ¶ 39.
- 24 7) Relocation and travel costs – In alleged reliance on Defendants’ alleged  
25  
26  
27  
28

1 representations, Plaintiff claims he relocated to California and sold his  
2 vehicles and furniture. Complaint at ¶ 12. It appears Plaintiff also seeks  
3 expenses associated with moving back to Hawaii after his alleged wrongful  
4 termination by Defendants. See Plaintiff's Response to Form Interrogatory  
5 9.2, Berndt Decl. Ex. C. Thus far, Plaintiff has produced receipts  
6 documenting \$1,414.88 in airline expenses incurred in traveling between  
7 Hawaii and California. Berndt Decl. Ex. E. This appears to be only a portion  
8 of this alleged item of damages.

10 8) Living costs – Plaintiff apparently seeks costs associated with “secur[ing] a  
11 residence in Los Angeles, California.” Complaint at ¶12. Plaintiff also seeks  
12 costs associated with living in Los Angeles for approximately three months  
13 after he was terminated. See Plaintiff's Response to Form Interrogatories 2.5,  
14 9.2, Berndt Decl. Ex. C. Even if one estimates the cost of living in Los  
15 Angeles at \$1,000 per month, this would amount to \$3,000 in damages.

17 9) Attorneys' fees – “[A]ttorneys' fees can be taken into account in determining  
18 the amount in controversy if a statute authorizes fees to a successful litigant.”  
19 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155 (9th Cir. 1998). Here,  
20 Plaintiff alleges a claim under California Labor Code 2699, which authorizes  
21 attorneys' fees to a successful litigant. § 2699(g)(1). Thus, Plaintiff's  
22 attorneys' fees are included when calculating the amount in controversy.  
23 Thus far, Plaintiff's attorneys have presumably conducted some investigation  
24 of Plaintiff's claims; drafted, served, and filed a complaint; drafted and served  
25 discovery; drafted and served discovery responses; collected and produced  
26 documents; and served a notice of deposition. See Berndt Decl. Exs. A-G.

1 Even if one estimates that Plaintiff's attorneys have spent a total of fifty hours  
2 on this case to date and charge only \$300 per hour, Plaintiff's claim for  
3 attorneys' fees to date amounts to \$15,000.

4  
5 10) Punitive damages – "It is well established that punitive damages are part of  
6 the amount in controversy in a civil action." *Gibson v. Chrysler Corp.*, 261  
7 F.3d 927, 945 (9th Cir. 2001). Here, Plaintiff seeks punitive damages against  
8 all three Defendants under three separate sections of the California Civil Code  
9 and the California Labor Code:

10 a) As his third cause of action, Plaintiff alleges Defendants made  
11 misrepresentations in violation of California Labor Code § 970. Section  
12 972 provides that "any person . . . who violates any provision of Section  
13 970 is liable to the party aggrieved, in a civil action, for **double damages**  
14 resulting from such misrepresentations." (emphasis added). Under his §  
15 970 claim, Plaintiff apparently seeks compensation for all damages listed  
16 above. *See* Complaint at ¶¶ 31-33. Because § 970 contains a double-  
17 damages provision, the jurisdictional amount is exceeded if this Court  
18 finds that Plaintiff's other damages exceed \$37,500.

19  
20 b) As a separate item of punitive damages, Plaintiff seeks 30 days of  
21 Plaintiff's former wages under Labor Code §§ 201-203, 2699. This  
22 amounts to approximately \$2,730.

23  
24 c) Finally, Plaintiff seeks punitive damages against all three Defendants  
25 under California Civil Code § 3294. There is no explicit limit to the  
26 amount of punitive damages that can be awarded under this section. *See*  
27 *id.*  
28

1 B. Based on Plaintiff's lengthy list of compensatory and punitive damages, it is more  
2 likely than not that the amount in controversy exceeds \$75,000. For example,  
3 Plaintiff's alleged lost wages to date (\$20,625), plus travel costs (\$1414.88), plus  
4 living costs (\$3,000), plus attorneys' fees to date (\$15,000) , plus the \$2730  
5 penalty under labor Code sections 201-203, 2699 equals \$42,769.88. Doubling  
6 this \$42,769.88 amount, under § 970's double damages provision, equals  
7 \$85,539.76. Thus, even if the Court only considers Plaintiff's lost wages to date,  
8 travel costs, living costs, the statutory penalty alleged, and attorneys' fees to date,  
9 the amount in controversy exceeds \$75,000.  
10

11 6. From the date of filing of the State Court Action to the present, and during all  
12 relevant times herein, Plaintiff Jose Neto, on the one hand, and Defendants Augustine Choi, AFI,  
13 and AFSI on the other hand, were and are citizens of different states, as follows:  
14

15 A. Individual Plaintiff Jose Neto, from the date of filing of the State Court Action to  
16 the present, and during all relevant times herein, is and has been a citizen and  
17 resident of Hawaii.

18 B. Individual Defendant Augustine Choi, from the date of filing of the State Court  
19 Action to the present, and during all relevant times herein, is and has been a  
20 citizen and resident of California. Complaint at ¶ 5.  
21

22 C. Defendants AFI and AFSI are each incorporated in Delaware and the principal  
23 place of business of each is Minnesota. Declaration of Thomas R. Moore  
24 ("Moore Decl.") at ¶ 2. Because neither AFI nor AFSI are citizens of Hawaii,  
25 complete diversity exists under 28 U.S.C. § 1332.  
26

27 1) For the purposes of diversity jurisdiction, a corporation is a citizen of any state  
28 where it is incorporated and of the state where it has its principal place of



business. *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (citing 28 U.S.C. § 1332(c)). Federal courts generally use one of two tests for locating a corporation's principal place of business. *Id.* Under the "place of operations test," the principal place of business is the state which contains a substantial predominance of corporate operations. *Id.* Under the "nerve center test," a corporation's principal place of business is where its executive and administrative functions are performed. *Id.*

a) Place of Operations Test - The relevant factors to determining the location of a majority of corporate activity include: (1) determining the location of the majority of the corporation's (a) employees, (b) tangible property, and (c) production activities; and (2) ascertaining where most of the corporation's (a) income is earned, (b) purchases are made, and (c) sales take place. *Id.* at 1094. Under these factors, neither AFI's nor AFSI's principal place of business is Hawaii. For example, Hawaii does not contain a majority of AFI or AFSI's employees, tangible property, or production activities.<sup>1</sup> Moore Decl. ¶ 3. Additionally, Hawaii is not the state where either AFI or AFSI earn most of their income<sup>2</sup> or make most of their sales or purchases.<sup>3</sup> *Id.* at ¶ 4. Thus, Hawaii is neither AFI nor

<sup>1</sup> AFI and AFSI operate from the Ameriprise Financial Center in Minneapolis, Minnesota, an 897,280 square foot building leased by AFI, and the 903,722 square foot Client Service Center, owned by AFI. Moore Decl. at ¶ 6. AFI also owns a 170,815 square foot training facility and conference center located in Chaska, Minnesota, and leases space for two operations centers—one in Minneapolis and another in Phoenix, Arizona. *Id.*

<sup>2</sup> For the purposes of discussing where the majority of a company's "income" or "sales" arise, its gross receipts are probably the best point of comparison because they measure what a company "earns" or receives from each state. For AFSI, Minnesota has the highest number of gross receipts of any state. *Id.* at ¶ 7.

<sup>3</sup> The best way to show where a company makes most of its "purchases," is probably to gauge the amounts in sales and use tax the company reported for each state. Seventy-five percent of AFI's (and its subsidiaries, which includes AFSI) 2007 Sales & Use Tax is allocated to



AFSI's principal place of business under the place of operations test.

b) Nerve Center Test – Both AFI and AFSI's official corporate address and executive offices are located in Minneapolis, Minnesota. *Id.* at ¶ 5. Thus, Minnesota is both AFI and AFSI's principal place of business under the nerve center test. *See Fidelity & Guaranty Life Ins. Co. v. Albertson*, 2007 WL 1971939, \* 3 (S.D. Cal. Jun. 20, 2007) (finding nerve center to be state where corporate headquarters and administrative and executive functions took place).

7. Therefore, complete diversity exists between the Plaintiff and the Defendants and, thus, diversity jurisdiction is proper before this District Court.

DATED: December 18, 2009

DORSEY & WHITNEY LLP

By: 

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THOMAS F. BERNDT (ADMITTED *PRO HAC VICE*) JESSICA LINEHAN (SBN 223569)

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Dated: December 18, 2009

GOLDMAN MAGDALIN KRIKES LLP

By: 

ROBERT W. CONTI (SBN 137307)  
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Minnesota, a clear majority. *Id.* at ¶ 8.

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Irvine, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 38 Technology Drive, Suite 100, Irvine, California 92618-2301. On December 18, 2009, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: DEFENDANTS AMERIPRISE FINANCIAL INC., AMERIPRISE FINANCIAL SERVICES, INC. AND AUGUSTINE CHOI'S NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. SECTIONS 1332 AND 1441(B)

SERVED UPON: SEE ATTACHED SERVICE LIST

☐

(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Irvine, California. I am readily familiar with the practice of Dorsey & Whitney LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

☒

(BY FEDERAL EXPRESS) I am readily familiar with the practice of Dorsey & Whitney LLP for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

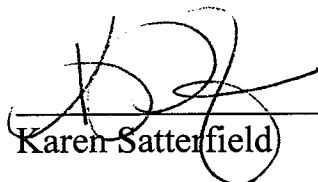
☐

(BY FACSIMILE) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error. Pursuant to C.R.C. 2009(i), I caused the transmitting facsimile machine to issue properly a transmission report, a copy of which is attached to this Declaration.

☒

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on December 18, 2009, at Irvine, California.

  
\_\_\_\_\_  
Karen Satterfield

**SERVICE LIST**

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